

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD SCOTT,

Plaintiff,

v.

MARK SELING AND THE SPECIAL
COMMITMENT CENTER

Defendants.

Case No. C03-5398RBL

REPORT AND
RECOMMENDATION
REGARDING INJUNCTIVE
RELIEF

**NOTED FOR
September 8th, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been re-referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4 following the Ninth Circuit vacating the order of dismissal and remanding the case. Before the court is plaintiff's motion for a temporary restraining order. (Dkt. # 169). The sum total of the motion is a one page document in which plaintiff states "They took, without warrant my legal computer to stop this case. I want it back by court order." (Dkt. # 169).

Defendants have responded to the motion and shown the reason plaintiff's computer was taken and why he was placed in isolation. (Dkt. # 174). Plaintiff was publishing a news letter in which he allegedly printed inflammatory and negative information about another resident and a cartoon picture which could be viewed as racist. (Dkt. # 174, page 2 and attachment A). The court notes the attachment does not match its description and is difficult to read or see. Officials who are not named defendants in this action isolated

1 plaintiff for his personal safety and security of the institution. A subsequent search for cause of plaintiff's
 2 computer revealed unauthorized programs and information on Mr. Scott's computer. (Dkt. # 174
 3 attachments).

4 DISCUSSION

5 Plaintiff did not raise any issues regarding the taking of his computer in the complaint. In fact, this
 6 case was remanded so plaintiff had the opportunity to amend his complaint. The defendants in this action
 7 are Mark Seling and the Special Commitment Center. The court should not intentionally or unwittingly
 8 predetermine a claim plaintiff may have against a non-party by considering plaintiff's requested motion. The
 9 court does not have the proper party before it to address this issue and should decline to address the issue.

10 On the merits, plaintiff's request fails no better. The basic function of injunctive relief is to preserve
 11 the status quo ante litem pending a determination of the action on the merits. Los Angeles Memorial Coliseum
 12 Com'n v. National Football League, 634 F.2d 1197, 1200 (9th Cir. 1980). A party seeking injunctive relief
 13 must fulfill one of two standards, the "traditional" or the "alternative." Cassim v. Bowen, 824 F.2d 791, 795
 14 (9th Cir. 1987).

15 Under the traditional standard, a court may issue preliminary relief if it finds that (1) the moving party
 16 will suffer irreparable injury if the relief is denied; (2) the moving party will probably prevail on the
 17 merits; (3) the balance of potential harm favors the moving party; and (4) the public interest favors
 18 granting relief. . . . Under the alternative standard, the moving party may meet its burden by
 19 demonstrating either (1) a combination of probable success and the possibility of irreparable injury or
 20 (2) that serious questions are raised and the balance of hardships tips sharply in its favor.
 21 Id. (citations omitted).

22 Plaintiff fails to show the taking of his computer and his placement in isolation are not for legitimate
 23 reasons. He has also failed to show any irreparable injury. Thus, he can fulfill neither test and his motion
 24 should be **DENIED**.

25 CONCLUSION

26 The Court should **DENY** the motion for a temporary restraining order. A proposed order
 27 accompanies this Report and Recommendation.

28 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
 P 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to

1 set the matter for consideration on **September 8th, 2005**, as noted in the caption.

2
3
4 DATED this 3rd day of August, 2005.

5
6 

7 Karen L. Strombom
8 United States Magistrate Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28